Rimini Street®

Rimini Street, Inc.
Global License & Advisory Services (GLAS)
WHITE PAPER

ORACLE LICENSE AUDIT

1   Abstract

Oracle licensees who have never been audited by Oracle may wish to do whatever it takes to keep it that way. Similarly, Oracle licensees who have been audited by Oracle may wish to do whatever it takes to avoid going through an audit ever again. While Rimini Street cannot guarantee you will never be audited by Oracle, it is important to know that it is unlikely that Oracle licensees who choose Rimini Street are at an increased level of risk of an Oracle license audit. The mere threat of a potential Oracle audit can influence Oracle licensees to make decisions that may not be in their best interests. As trusted advisors in the IT industry, we believe that removing the mystery of an Oracle audit also removes the overwhelming (and unnecessary) fear of a potential audit. As such, we've created this document to bring more transparency to the Oracle audit process so you can focus on making decisions that are in the best interests of your organization free from the potential fear, uncertainty, and doubt associated with an Oracle audit.

2   Table of Contents

3   About the Author

Ryan Bendana, Senior Director for Rimini Street's Global License and Advisory Services team, has over 20 years' experience in the software industry, including various roles in sales and finance for Oracle (including NetSuite). In addition, Ryan was a former auditor for Oracle's License Management Services group during which time he identified considerable amounts non-compliance, provided training to new hires during the onboarding process, and oversaw very complex audits that spanned across Oracle technology, middleware, and application programs. Ryan has advised some of the largest organizations in the world (including Global Fortune 5) with a specific focus around risk mitigation, compliance, IT optimization, and enterprise solutions. In addition, Ryan spearheaded the Oracle licensing program at Anglepoint,[1] a Leader for four years in a row in the Gartner® Magic Quadrant™ for SAM Managed Services,[2] and provided industry leading advisory services to clients on behalf of Palisade Compliance,[3] one of the premier leading and independent Oracle-focused license advisory firms. Ryan is wildly passionate about customer experience and finding ways to help people save money.

4   Disclaimer

Nothing contained in this document shall be considered legal advice. Rimini Street encourages you to speak with your attorney(s) for further considerations regarding your use of Oracle programs. None of Rimini Street's products and services described in this document or elsewhere include providing any legal advice to its clients. Significant effort has been made to ensure that this document includes links to original sources to ensure the validity and accuracy of the information presented, however, no warranty, express or implied, is provided. Some or all URLs/links are subject to change outside of Rimini Street's control.

5   Executive Summary

As the leading alternative support provider for Oracle software programs, we are often asked by prospective customers:

> *"If we become Rimini Street clients, will Oracle audit us?"*

While we believe that it's unlikely you will be subject to an audit only because you are receiving Rimini Street support, this doesn't mean you will avoid an Oracle license audit indefinitely; rather, it means that we are not aware of evidence that the potential for an Oracle license audit increases merely because you are a Rimini Street client. The Rimini Street Global License and Advisory Services team actively tracks this information across all our current and prospective clients. The fact that such a question comes up so often is something we find deeply troubling. You shouldn't have to fear the vendors you do business with. In fact, we believe business relationships should be based on trust and honesty, not fear and trepidation. That is why we've created this document; to bring more transparency to Oracle's audit process with a sincere desire to help you prepare in advance for any potential license audit, and, more importantly, ensure you have the tools and knowledge to remain compliant with your Oracle software license entitlements. We believe that there may come a time when you run out of ways to avoid Oracle's increasing costs and we want to ensure we're here to help you.

If you've been a long-time Oracle licensee, you may find that Oracle software licensing and support may require a significant or increasing percentage of your total IT spend.[4,5] In addition, you may have attempted to find ways to reduce the impact to your IT budget and quickly discovered that, due to the complexity surrounding Oracle's licensing framework, it's not as easy as you had hoped. Simply stated, Oracle's licensing framework can be very complex.[6] Oracle License Management Services, the group responsible for conducting license audits, states:

> *"Managing multiple licensing terms and conditions while maintaining an accurate, up-to-date view of usage can be a challenging endeavor. It's also becoming increasingly difficult as IT environments move to the cloud, become ever-more virtual, and are constantly impacted by changes to organizational structures."*[7]

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[1] https://www.anglepoint.com/
[2] https://www.anglepoint.com/blog/news/anglepoint-named-a-leader-by-gartner/
[3] https://palisadecompliance.com/
[4] https://techmonitor.ai/hardware/oracle-licensing-survey
[5] https://www.theregister.com/2023/07/24/oracle_java_license_terms/
[6] https://www.oracle.com/us/assets/lms-question-risk-reward-2150475.pdf
[7] https://www.oracle.com/corporate/license-management-services/

Additionally, according to Oracle:

"The Oracle License Management Services (LMS) group is the only Oracle group authorized to review and provide opinions on compliance status."[8]

The statement above is exceptionally important. We believe that if there is one thing Oracle licensees should remember if you think you're being audited or will be audited, it is this. If an Oracle sales representative is talking about license compliance or otherwise suggesting that you are out of compliance, you may wish to consider reminding them of their own policies and pointing them directly to this Oracle webpage.

You should remind yourself that Oracle's license auditors may not always get their analyses right the first time. This is why it is so important to speak with an independent expert who can help provide you with additional considerations as you prepare and work towards license compliance.

6   Contracts

The importance of your Oracle contracts cannot be overstated. Ensuring you have all your contracts in your possession may prove invaluable in the event of an Oracle audit. Your Oracle contracts may serve as the foundation of almost every single aspect of your use of Oracle software program licenses. While it is easy to think of an Oracle license audit as an IT project due to Oracle's request to declare software usage and the running of measurement tools, you must remember throughout the Oracle audit that it is in fact an examination of your use of Oracle software programs in accordance with your respective contracts.

Oracle's website states:

"The Customer and Partner Are Responsible for Managing Their Oracle Licenses

When customers license Oracle software, it is their responsibility to ensure that they are utilizing their licenses in accordance with the terms and conditions of their license agreements. In addition, it is a partner's responsibility to ensure that they are selling Oracle licenses in accordance with their resale distribution agreements. It is ultimately the customer's and partner's responsibility to ensure that they understand their license rights and that they are complying with those rights."[9]

Absent possession, and in some cases organization, of your contracts, you may be facing additional challenges in the event of an Oracle license audit. Over time, as responsibilities change within your organization, the knowledge and understanding of your Oracle software license assets may be overlooked or lost in the shuffle. Document retention plays a key factor in an organization's ability to properly navigate an Oracle audit, but it also helps to ensure your attorney can properly advise you throughout the audit and ensure that you have visibility into your specific rights and obligations as an Oracle licensee.

In the event you have received an audit notification from Oracle and believe you may be missing some, most, or all of your Oracle contracts, you may wish to ask your attorney for advice. You may also consider requesting copies of *all* contracts from Oracle in preparation for the audit.

Typically, there are three documents that can make up your Oracle software license contract (for perpetually licensed software programs)[10]:

1. **Oracle Master Agreement ("OMA"):** These documents may also be known as Oracle License and Services Agreement ("OLSA") and Software License and Services Agreement ("SLSA").

2. **Oracle Ordering Document:** This document may reference the governing agreement (OMA, etc.) and is created at the time you purchase software licenses.

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[8] https://www.oracle.com/corporate/license-management-services/compliance.html
[9] https://www.oracle.com/corporate/license-management-services/compliance.html
[10] https://www.oracle.com/contracts/

3. **Oracle Software Update License and Support Renewal ("SULS"):** If you currently have active technical support with Oracle, your SULS agreement may provide you additional insights into what licenses are actively supported with Oracle and provide you the right to access updates, patches, etc.

Each document may include specific terms and conditions that you and your attorney may want to review and be aware of for the purposes of an Oracle license audit and to ensure compliance before and after such an audit.

7   Audit Risk Factors

The following is a list of potential risk factors that we believe could increase the likelihood of an Oracle license audit:

1. Lack of Communication
2. No Current/Active Sales Opportunity
3. Mergers, Acquisitions, and Divestitures
4. Use of Virtualization and Cloud Technologies
5. Older License Metrics
6. Mixed License Metrics
7. Support Tickets for Unlicensed Programs

7.1   Lack of Communication

Many Oracle licensees fail to understand that a total lack of communication with Oracle's sales representatives may prompt Oracle to audit you. Oracle sales representatives' incentive compensation plans may be based on selling you new products and/or services. This cannot be done if you, as a licensee, do not maintain a dialogue with Oracle's sales representatives. This doesn't mean you need to divulge unnecessary or detailed information but keeping in touch with Oracle sales representatives and building rapport with them may indeed help keep you off their list of potential license audit targets.

7.2   Lack of Current/Active Sales Opportunities

As an Oracle licensee, even if you successfully keep an open dialogue with your Oracle sales representatives you may wish to consider including Oracle in a conversation for procurement of new product and/or services, as it may help you stave off a potential Oracle audit.

7.3   Mergers, Acquisitions, and Divestitures

This is one of, if not the, biggest potential risk factor when it comes to Oracle license compliance. When licensees procure software program licenses, their contracts with Oracle define who, exactly, the customer is (customer definition). If a merger, acquisition, or divesture results in a deviation from the customer definition, that could affect your license compliance position.

7.4   Older License Metrics

While older license metrics may grant Oracle licensees flexibility when it comes to licensing options, these license metrics may also create a potential opportunity for an auditor to identify potential license compliance shortfalls and move you off the older license metrics to something more current. More current software program licenses may potentially have more restrictive use rights and/or language that may not grant you the same flexibility which may be why it may benefit you to consider retaining older license entitlements as long as possible. If costs are a factor, this is where Rimini Street may help you extend the life of such assets while helping reduce costs.

7.5   Mixed License Metrics

Similar to how older license metrics may be considered a target for a potential license audit, a combination of mixed license metrics may also pose potential risk. With mixed license metrics comes complexity and for license auditors, complexity may be a potential reason to consider initiating an audit.

7.6   Support Tickets for Unlicensed Programs

If your organization has logged a support ticket for a program in which you do not have any licenses (or an active Software Update License and Support agreement with Oracle), you may face a potential license audit because you (i) may be using a program that you may not be licensed to use, or (ii) are seeking technical support from Oracle but haven't compensated Oracle for such services. We believe that proper internal governance and policies may help prevent this from occurring.

7.7   Specialty Topics

If you've spent any time scouring the web for insights on Oracle audits, you may likely realize that many of the topics of discussion and advice are closely related to what can be described as Specialty Topics[11]. Specialty Topics is a section on Oracle's License Management Services website that covers a range of more narrowly focused topics such as Partitioning (deployment of Oracle programs in a virtualized environment), Licensing Data Recovery Environments (disaster recovery), Licensing Oracle Software in the Cloud Computing Environment (cloud), etc.

We believe that what is particularly interesting is that several of these documents include language such as, or similar to, *"This document is for educational purposes only…"* and *"It may not be incorporated into any contract and does not constitute a contract or a commitment to any specific terms. Policies and this document are subject to change without notice."* As an Oracle licensee, you may wish to consider whether any of these topics impact your use of Oracle programs and, if so, whether you need to speak with your attorney to discuss these matters to determine what action, if any, is required.

8   Audit Notification Letter

An audit notification letter may be used to formally notify licensees of an Oracle license audit generally. When reviewing the audit notification letter, Oracle licensees should consider:

1. Oracle's Right to Audit
2. Scope of the Audit

8.1   Oracle's Right to Audit

It is exceptionally important to know under which agreements, exactly, Oracle is invoking the right to audit so that you, too, can read the audit clause(s) of your Oracle contract(s) and better understand your rights and obligations and confer with your attorney.

8.2   Scope of Audit

Based on this webpage[12], there are hundreds of Oracle products. Does Oracle intend to audit every single product in the voluminous list? As stated above, it may potentially prove very helpful if you have a clear understanding which agreements, specifically, Oracle is invoking for the right to conduct an audit. This will enable you to review each agreement's audit clause to better understand each party's rights and obligations. In addition, this may also provide a more defined scope as each agreement may have a list of Oracle programs in the contract for which Oracle has a right to audit. Furthermore, the scope of the audit may also be defined by the legal entity or entities that Oracle wishes to audit. Again, knowing exactly which contracts Oracle is auditing will help define the scope of the agreement(s) for your review with your legal representative and ensure that the audit does not expand into products and/or services that are unrelated to your specific contract. This is the best way to avoid "scope creep" which may otherwise result in your organization expending valuable time, effort, and resources unnecessarily.

9   Oracle Server Worksheet

The Oracle Server Worksheet, or "OSW" as it is commonly referred to, is a Microsoft Excel template that Oracle may use to ask customers to "declare" information related to their usage and deployment of Oracle software programs. The OSW may have been designed as a "one-size-fits -all" template. This means that the information Oracle is requesting may or may not be applicable to you depending on your specific Oracle contracts. You may consider that Oracle may be potentially requesting (i) information that

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[11] https://www.oracle.com/corporate/pricing/specialty-topics.html
[12] https://docs.oracle.com/en/browseall.html

is not germane to your specific situation and/or contract(s) and (ii) Oracle may be requesting you to provide the same information across two different methods.

For example, if Oracle's analysis and technical tools (measurement scripts) collect information regarding your usage of Oracle programs, why would you need to complete an OSW that requests the same information? Would you consider this duplicative? And if so, doesn't this mean you're spending more time than is necessary on a redundant task? Hint: These are great questions for your attorney. Data from multiple different sources may allow auditors to examine the data in more detail and identify potential discrepancies.

10   Oracle Analysis and Technical Tools

Oracle has developed several different tools designed to collect usage information in regard to your use of Oracle programs. These tools may include discovery capabilities as well as specific program measurement tools. In addition, you may want to consider whether these tools could collect information that may be unrelated to your specific circumstances.

11   Third Party Analysis and Technical Tools

While Oracle's audit team appears to remain "in-house",[13] Oracle appears to have become increasingly more receptive to the idea of using partners for licensing services.[14] In addition to the use of partners, licensees may be able to use verified third party tools to collect and assess usage related information. However, Rimini Street recommends that Oracle licensees apprise themselves of the differences between verified third party tools and non-verified third-party tools and which one is right for their circumstances.

11.1 Verified Third-Party Analysis and Tools

With regard to the use of third-party tools from Oracle's verified vendors, Oracle states:

> *"Oracle's partnerships with Third Party Tool Vendors, which includes verification that their tools provide accurate Oracle usage data, provides customers with confidence that any verified tools they are using accurately collect software deployment information relating to Oracle products. It is important to note that the scope of the verification process only covers a tool's usage data related to specific Oracle products. Once the usage data has been extracted, the customer will work with their Tool Vendor and LMS contact on creating an analysis."*[15]

In other words, verified vendor tools may be collecting software deployment information relating to Oracle products but how, exactly, it pertains to your original (and specific) set of contracts with Oracle may be unclear.

Do I have to enter a new agreement with a verified vendor in order to use their tool? Is it possible that there may be more than one interpretation from a set of data? If so, which interpretation do we believe is correct? Are verified vendor tools sending the data to Oracle? Are verified vendor tools collecting information in excess of your contractual obligations? Are verified vendor tools only collecting information that is absolutely necessary for the purpose of an Oracle license audit or are they collecting additional information? Are verified vendor tools collecting information that could expose confidential data that might potentially increase your security risk? What are verified vendor tools doing with the data? Are verified vendor tools sending the data to foreign nations? How is this data being stored and for how long? Who owns the data?

These are questions you may wish to consider before adopting a new tool and this is why we believe it is exceptionally important to understand the potential advantages and disadvantages of verified vendors and their associated tools.

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[13] https://www.oracle.com/corporate/license-management-services/
[14] https://www.oracle.com/opn/expertise/software-asset-mgmt-9805437.pdf
[15] https://www.oracle.com/corporate/license-management-services/tooling.html

11.2 Non-Verified Third-Party Analysis and Tools

Rimini Street has developed key relationships with leading independent license experts who have developed proprietary tools capable of analyzing data from both their own measurement analysis tools *and* Oracle's. More importantly, non-verified third-party measurement analysis tools may provide flexibility as these tools may take into consideration your specific contracts and "count" your deployment and usage in accordance with your specific circumstances, giving you confidence in the results and a deeper understanding of the underlying data. We recommend consulting with your legal counsel to determine which tools are right for you.

11.3 Oracle Licensing Questionnaire

Along with Oracle's possible requests for a completed OSW and analysis and technical tools (measurement), Oracle may ask licensees to complete a licensing questionnaire. The licensing questionnaire is a series of questions designed to capture unique aspects of a licensees' usage, organizational structure, hardware configurations, and general usage of Oracle programs that Oracle would likely not know unless specifically asked from the customer.

Here are several questions you may wish to consider in preparation for an audit:

1. Did we buy directly from Oracle or through a reseller?
2. Do we have all of our original agreements, including governing agreements and ordering documents?
3. Has our organization gone through any mergers, acquisitions, or divestitures?
4. Is our usage and/or demand of Oracle software programs cyclical?
5. Do we have a disaster recovery plan in place?
6. Have we deployed Oracle programs in a virtualized environment?
7. Are we standardized on a single license metric or do we leverage more than one license metric in our entitlements?
8. Are there any license minimum requirements?
9. Do we have license entitlements that precede 2003?
10. When was the last time we purchased additional software licenses?

12 Java SE

On 20 April 2009, Oracle formally announced it had entered into an agreement to buy Sun Microsystems[16] and the rights to Java. Java releases after mid-2010 were subsequently re-branded from Sun to Oracle.[17] Oracle announced substantial changes to how Oracle Java was licensed for releases starting 16 April 2019, stating:

> *"The Oracle Technology Network License Agreement for Oracle Java SE is substantially different from prior Oracle Java licenses. This license permits certain uses, such as personal use and development use, at no cost -- but other uses authorized under prior Oracle Java licenses may no longer be available."*[18]

Under legacy product licensing, Oracle licensed Java SE Advanced Desktop on a Named User Plus (NUP) basis and Oracle Java SE Suite on a NUP basis or a per processor basis. Oracle, however, has transitioned to a Java SE Subscriptions offering for such products.[19]   As such, Oracle customers may be required to use Employee for Java SE Universal Subscription with a different subscription metric under the new Oracle Java SE Universal Subscription Global Price List[20] going forward. The definition for Employee for Java SE Universal Subscription is below:

> *"**Employee for Java SE Universal Subscription:** is defined as (i) all of Your full-time, part-time, temporary employees, and (ii) all of the full-time employees, part-time employees and temporary employees of Your agents, contractors, outsourcers, and consultants that support Your internal business operations. The quantity of the licenses required is determined by the number of Employees and not just the actual number of employees that use the Programs. For these Java SE Universal Subscription licenses, the licensed quantity purchased must, at a minimum, be equal to the number*

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[16] https://www.oracle.com/corporate/pressrelease/oracle-buys-sun-042009.html
[17] https://www.java.com/releases/
[18] https://www.java.com/en/download/release_notice.jsp
[19] https://www.oracle.com/java/technologies/se-products.html
[20] https://www.oracle.com/assets/java-se-subscription-pricelist-5028356.pdf

of Employees as of the effective date of Your order. Under this Employee metric for Java SE Universal Subscription Programs(s), You may only install and/or run the Java SE Universal Subscription Program(s) on up to 50,000 Processors, If Your use exceeds 50,000 Processors, exclusive of Processors installed and/or running on desktop and laptop computers, You must obtain an additional license from Oracle."[21]

If you're looking for a comprehensive overview on Java SE licensing, don't forget to check out the Java SE Licensing Overview White Paper from Rimini Street for a more detailed explanation of what you need to know about Java SE.

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[21] https://www.oracle.com/assets/java-se-subscription-pricelist-5028356.pdf

13 Conclusion

At a time when predictability matters most, you shouldn't have to contend with unpredictable software vendors. Complex licensing issues can undermine your ability to execute your future IT roadmap with ease. We believe it is essential that you have the proper guidance and assistance to ensure a smooth road ahead. Indeed, we also believe the best way to avoid challenges is to remain compliant at all times as this may afford you the most options, including the ability to move to Rimini Street with confidence, and avoid unnecessary costs while maximizing the value of your software assets.

14 Frequently Asked Questions (FAQs)

14.1 "Can Rimini Street help us with the Oracle license audit?"

Yes! Rimini Street's Global License and Advisory Services team can help you prepare for the audit by sharing with you insights into what to expect based on past experience as former Oracle auditors as well as licensing experts, providing you a checklist of considerations and action items, and reviewing your current deployment of Oracle products. Should you wish to schedule a complimentary advisory session, please contact your Rimini Street account executive or the Rimini Street Global License and Advisory Services team today!

14.2 "Why did Oracle choose to audit us?"

This is one of the most common questions asked by Oracle licensees when audited. There are a multitude of reasons why an Oracle licensee may be chosen for an audit. In some cases, if you know the reason why Oracle chose to audit you, you may be able to get the audit stopped (see below).

14.3 "Who at Oracle decided to audit us?"

It may be difficult to identify who, exactly, made the final decision to audit you, however, the decision may have been made by several different people at Oracle, including your license sales representative, a member of Oracle's License Management Services, or someone from Oracle's technical support sales team.

14.4 "Can we get the audit stopped?"

Yes, it may be possible. Rare, but possible. In our experience, audits may be stopped because (i) the reason and/or concern that lead to the decision to audit a licensee has been addressed/resolved or (ii) due to extenuating circumstances that are specific to that particular customer Oracle may decide it is in the best interest of both parties to stop the audit. If you want to get an audit stopped, check with your attorney and independent license experts to discuss and determine whether this is a viable option.

14.5 "If we received an audit notification letter, how much time do we have before it begins?"

According to Oracle's Online Transactional Oracle Master Agreement - Oracle America, Inc. - v062223, Schedule P, Section 8 – Oracle Audit[22], Oracle states the following about notice:

> "Upon 45 days written notice, Oracle may audit Your use of the Programs to ensure Your use of the Programs is in compliance with the terms of the applicable order and the Master Agreement. Any such audit shall not unreasonably interfere with Your normal business operations. You agree to cooperate with Oracle's audit and provide reasonable assistance and access to information reasonably requested by Oracle. Such assistance shall include, but shall not be limited to, the running of Oracle data measurement tools on Your servers and providing the resulting data to Oracle. The performance of the audit and non-public data obtained during the audit (including findings or reports that result from the audit) shall be subject to the provisions of section 8 (Nondisclosure) of the General Terms. If the audit identifies non-compliance, You agree to remedy (which may include, without limitation, the payment of any fees for additional licenses for Programs) such non-compliance within 30 days of written notification of that non-compliance. If You do not remedy the non-compliance, Oracle can end (a) Program-related Service Offerings (including technical support), (b) Program licenses ordered under this Schedule P and related agreements and/or (c) the Master Agreement. You agree that Oracle shall not be responsible for any of Your costs incurred in cooperating with the audit."

14.6 "If we're feeling unprepared, how do we postpone the audit?"

While Oracle has the right to audit your use of software programs (assuming your contract includes language granting Oracle the right to audit your use of the software programs), you may want to defer to your attorney to determine whether a simple request to Oracle may result in Oracle granting you additional time. Oracle licensees may find that it is in the best interests of the parties

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[22] https://www.oracle.com/contracts/software/

involved to be fully prepared to participate in such an audit so as to minimize the impacts to both organizations. In addition, you may wish to check with your attorney to determine whether any additional provisions may grant you the option to postpone or stop the audit.

14.7 *"What potential factors increase our risk for an Oracle audit?"*

Please see Section 4 – Audit Risk Factors above for more detailed information in regard to specific potential risk factors. In addition, it is important to understand the purpose of the Oracle license audit for your specific circumstances. We believe that if you are an Oracle licensee, proactive license management can benefit your organization in a multitude of ways as it may enable you to identify potential risk factors long before they become problematic and potentially undermine your future plans.

14.8 *"What should our first steps be if we received an audit notification letter?"*

Here are what we believe are the very first steps you can take in the event you receive an Oracle audit notification letter:

1. Notify your attorney.

2. Subject to your attorney's guidance, and with their assistance, request that Oracle provide a copy of any and all Oracle contracts, including master or governing agreements, original ordering documents (for all orders regardless of support status), and support contract renewals.

14.9 *"How do we properly navigate an Oracle license audit?"*

While Oracle may follow a standard audit process in an effort to collect as much information as possible within the shortest period of time, each Oracle license audit may differ slightly. In fact, depending on who your auditor is, you may find the experience uniquely different from your peers. A recommended way to properly navigate an Oracle license audit is with experts who can guide you every step of the way, from a legal perspective (your attorney) as well as independent licensing experts who understand the audit process and methodology.

14.10 *"What do we do if we identify a potential license shortfall?"*

It depends. You'll need to work with your attorney but we generally recommend that you keep the following questions close by:

1. Was the potential license shortfall the result of inadvertent usage?
2. Was the potential license shortfall the result of an increased need?
3. Was the potential license shortfall based on a temporary need over a brief moment in time?
4. Was the potential license shortfall based on historical usage data?
5. Was the potential license shortfall the result of historical usage data that was copied over to a new installation?

Depending on your answers to these questions, your path to resolution may vary and can involve very different conversations on how best to remediate. This is why it is so important to ensure you work with the right team.

14.11 *"What would you say is the biggest mistake licensees make during an audit?"*

The biggest mistake Oracle licensees can make during an audit is failing to understand the importance of asking Oracle very specific questions and ensuring Oracle provides responsive answers. An audit provides Oracle the opportunity to ask you very specific questions about your use of Oracle programs. This may also present you the opportunity to ask Oracle very specific questions in return.

For example, many Oracle licensees are not clear in their understanding of Oracle's Technical Support Policies; and, more specifically, Matching Service Levels. If you don't have an absolutely clear understanding of which Oracle software programs are part of the same License Set, you may wish to defer to your attorney and consider whether asking Oracle for a complete and comprehensive listing of all software programs and their respective License Sets to avoid ambiguity in the future.

In addition, Oracle audits may provide you the opportunity to request a copy of any and all Oracle agreements/contracts to help you ensure you're not missing any documents that Oracle may have. Again, you may wish to defer to your attorney for further consideration of requests such as this.

14.12 *"Should we use our Oracle reseller to help us through the audit?"*

Ultimately, the decision to choose whom you believe has your best interests may be quite personal. We believe that potential conflicts of interest, whether real or perceived, should be avoided to the fullest extent possible and your decision to choose a partner should be outcome based. In other words, you should define your objectives and identify the organization that is best suited and aligned with those objectives.

14.13 *"What if I want to use Oracle's free license service offering to see what our compliance position is?"*

While Oracle may provide free license services, you may wish to consider the impact to your organization. For example, in the event Oracle's license services identifies what they believe is a license compliance violation, Oracle may pursue resolution within 30 days and we believe that some Oracle licensees may find this difficult. More specifically, Oracle states:

> *"If Oracle Corporation identifies a license violation, it will provide written notification of the violation to the noncompliant organization and generally will allow thirty days for obtaining the appropriate licenses or otherwise correcting the violation. Oracle LMS and the commercial team will assist the customer or partner in obtaining the appropriate licenses for the desired use of the Oracle software programs."*[23]

What if Oracle's license auditors make an error in their license compliance determinations? Would you have sufficient time to identify this and properly convey this to Oracle before the end of the 30 days? Remember, once findings have been presented, it is up to you to ensure you have reviewed Oracle's findings and dispute anything that you believe was made in error.

14.14 *"What are some of the most common mistakes that Oracle auditors make?"*

As with all human endeavors, the potential for human error may exist. As such, Oracle's license auditors may overlook certain aspects of your particular license agreements. In addition, you may wish to verify accuracy by reconciling your entitlements with your usage. This is why it is so important that you review Oracle's license compliance determinations to ascertain whether you believe any potential errors have been made or whether you believe Oracle may have misinterpreted something in regard to your specific contract.

14.15 *"What is the difference between a preliminary report and final report?"*

Oracle may submit to you a "preliminary report". This preliminary report may or may not be identified as such. In some cases, the "preliminary report" may simply consist of a document and/or workbook whereby Oracle asks you to confirm and verify the contents and identify any potential errors. Many Oracle licensees fail to understand the importance of this request and may not review the contents of these materials. If you fail to identify any errors at that moment in time, Oracle may simply convert the document/workbook to a "final report" in which case Oracle may presume the findings to be correct and free from errors and, if the findings include potential license shortfalls, you may be required to resolve those shortfalls within thirty (30) days.[24]

14.16 *"What is the most important piece of advice you can give us?"*

Oracle's licensing framework is complex, so if you want a successful Oracle audit outcome, you may need help. We recommend that you use the advice of your attorney and expert license advisory services to ensure a successful outcome. Lastly, there may be no better time than an audit to request a copy of ALL your Oracle contracts. This includes (i) master or governing agreements (ii) original ordering documents and (iii) support renewals.

14.17 *"What does a successful Oracle audit outcome look like?"*

In our experience, Oracle licensees may say that a successful audit outcome is one where Oracle does not find or identify any license compliance shortfalls and the audit ends without the licensee owing Oracle anything. What if you could avoid an audit altogether, though? Wouldn't that be an even better outcome? We believe the best audit is the one you avoid altogether. So how does an organization avoid an Oracle audit? In addition to the advice we've provided in this White Paper, we believe that licensees who are informed may avoid audits because they recognize that while contracts create legal obligations on you as an Oracle

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[23] https://www.oracle.com/corporate/license-management-services/compliance.html
[24] https://www.oracle.com/corporate/license-management-services/compliance.html

licensee, you're still very much an Oracle customer and many times, commercial conversations can help avoid potential contentious conversations around licensing and audits.

14.18 *"What Software Asset Management Tool(s) do you recommend remain compliant?"*

Generally, we remain tools agnostic, however, we recognize that some tools may be a better fit for some organizations than others primarily because Oracle licensees may not be seeking to proactively manage Oracle licenses *only*. In other words, if you're attempting to manage licenses from other software publishers, a tool that offers you visibility into usage and deployment of those other programs may prove quite useful. Regardless, we believe that tools are not a replacement for legal counsel and expert advice.

14.19 *"Should we purchase additional licenses for license shortfalls before Oracle issues their audit findings?"*

It depends. If you have identified potential license shortfalls and are absolutely certain of your license compliance position, you may wish to enter into commercial discussions with Oracle and offer the purchase of software program licenses in exchange for Oracle to stop the audit altogether. Of course, this should be done with the assistance of your attorney. This may provide Oracle the opportunity to sell additional software program licenses and helps you avoid expending valuable time, effort, and resources on an ongoing audit. As always, we recommend that you remain compliant with Oracle's license requirements at all times, but we do recognize that some Oracle licensees may experience inadvertent usage at times and need to "true up".

14.20 *"Why do you continually recommend working with our attorney and independent licensing experts?"*

The reason we recommend working with your attorney *and* independent licensing experts is primarily due to the fact that both parties serve very important and distinct roles in helping you navigate an Oracle audit. Attorneys provide legal expertise in regard to all aspects surrounding your rights and obligations while license experts may provide direct insight into Oracle's general business practices and interpretation on technical aspects of your usage that you may not be able to obtain elsewhere.

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